

2025

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

WORKPLACE LEGISLATION AMENDMENT BILL 2025 (No 3)

REVISED EXPLANATORY STATEMENT

**Presented by
Michael Pettersson MLA
Minister for Skills, Training and Industrial Relations
September 2025**

WORKPLACE LEGISLATION AMENDMENT BILL 2025 (No 3)

This revised explanatory statement (the statement) relates to the Workplace Legislation Amendment Bill 2025 (No 3) (the Bill) as presented in the ACT Legislative Assembly under the Workplace Legislation Amendment Bill 2025 (No 2). This Explanatory Statement has been revised for the Workplace Legislation Amendment Bill 2025 (No 3) following an Assembly motion agreed on 2 September 2025 to divide the Workplace Legislation Amendment Bill 2025 (No 2) as presented in the ACT Legislative Assembly. A human rights compatibility statement was provided with the Workplace Legislation Amendment Bill 2025 (No 2) as presented in the Legislative Assembly on 2 September 2025. It has been prepared to assist the reader. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the Bill. It is not intended to be a comprehensive description of the Bill. What is said about a provision is not to be taken as providing a definitive interpretation of the meaning of a provision, this being a task for the courts.

The Bill is declared a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The purpose of this Bill is to introduce amendments to the following legislation:

- *Dangerous Substances Act 2004*
- *Long Service Leave Act 1976*
- *Long Service Leave (Portable Schemes) Act 2009*
- *Public Sector Workers Compensation Fund Act 2018*
- *Workers Compensation Act 1951*, and
- *Work Health and Safety Act 2011*.

SUMMARY OF AMENDMENTS

Amendments to the *Work Health and Safety Act 2011*

The *Work Health Safety Act 2011* (WHS Act) establishes a legal framework to protect the health and safety of workers and others in the workplace. It places a primary duty of care on persons conducting a business or undertaking (PCBUs) to manage risks and ensure safe work environments.

The WHS Act promotes consultation between employers and workers, mandates the reporting of serious and dangerous workplace incidents, and provides enforcement mechanisms through the regulator, WorkSafe ACT.

The ACT's WHS laws adopt the nationally agreed model laws as a signatory under the [Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety](#) (2008).

Incident Notification Amendments

Part 3 of the WHS Act adopts the model laws and sets out the requirement for notifiable incidents and supports the WHS regulator in delivering their compliance and enforcement functions. The purpose of the notifiable incident provisions is to alert the WHS regulator to serious incidents which require timely investigations.

At a national level, WHS Ministers agreed to policy recommendations aimed at strengthening the incident notification provisions under the model laws which included:

- clarifying the operation and meaning of current provisions in the incident notification framework, and
- addressing gaps in the current notification requirements, particularly in relation to severe psychosocial hazards and psychological harm, including serious workplace violence, sexual assault and certain dangerous incidents.

In the ACT, the *Workplace Legislation Amendment Bill 2022* progressed early amendments for the inclusion of sexual assault as a notifiable incident in the ACT. In doing so, the ACT Government recognised the role that PCBUs have in ensuring workplaces are safe for all workers and serious workplace incidents are notified to the regulator, including incidents of sexual assault, irrespective of the immediacy of medical treatment.

This Bill progresses several clarifying amendments relating to incident notification requirements including:

- clarification of the definitions for 'dangerous incident' and 'serious injury or illness'
- augmentation of notifiable worker injuries to include spinal injury or a serious crush injury,
- broadening of the relevant provisions to capture a *significant* blow, knock or other shock to a person's head, noting the current provisions may not capture a serious head injury where signs and symptoms of a serious head injury may not be immediately apparent.

In addition, a new WHS obligation has been created to ensure that a PCBU and persons with management or control of a workplace notify each other of a notifiable incident at the workplace. This obligation is designed to ensure timely and coordinated responses to notifiable incidents, promote information sharing, and enhance regulatory visibility, particularly in complex or multi-duty-holder environments. Relevantly, section 12A of the WHS Act applies to this new offence, making it a strict liability offence.

Work Health and Safety prosecution limitation amendment

Section 232 of the WHS Act provides for time limits in which a prosecution may commence, being within 2 years after the offence comes to the notice of the regulator, or within 1 year after a coronial report was made or a coronial inquiry ended if it appeared from the report or proceeding that an offence had been committed.

An exception exists that a proceeding for a category 1 offence may be brought after the end of the applicable limitation period in section 232(1) of the WHS Act if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.

The time limits under section 232 of the WHS Act do not apply to a proceeding for an industrial manslaughter offence.

WHS investigations are complex noting the type of matters that can be investigated cover workplace deaths, as well as matters that could lead to death or serious injury.

The prosecution limitation period was recently questioned in New South Wales (NSW) in the proceedings of *Prime Marble & Granite Pty Ltd v SafeWork NSW*¹ where a prosecution against Prime Marble for the deaths of two workers exposed to unsafe levels of respirable crystalline silica was dismissed due to being out of time.

Notwithstanding that the prosecution had commenced in March 2023, less than 2 years after the NSW regulator became aware of the deaths, they had previously attended a Prime Marble site in August 2017 and established 5 workers had been exposed to more than 7.5 times the exposure standard. The NSW regulator issued improvement notices, identifying a contravention on 16 March 2018 relating to unsafe exposure to respirable crystalline silica. The Court of Criminal Appeal determined that the NSW regulator became aware of the offence in at least 2018 and were outside of the limitation period.

This amendment is designed to remedy and avoid any doubt of the intent and the application of the work health and safety prosecution limitation periods. The ACT recognises that the interpretation of the NSW Criminal Court of Appeal takes a narrow view. This change has been crafted to ensure that there is accountability for breaches of work health and safety duties. The intention of this amendment is to address potential and unintended consequences, whereby a case involving an alleged breach of duty may technically fall outside the limitation period but only due to a narrow interpretation of the provision. This disregards the apparent injustice arising from a breach and negates the longstanding notion of the requirement to uphold duties under the WHS legislative framework.

The amendment in this Bill will afford the Court with the power to grant leave to bring on a prosecution out of time, if it is satisfied that it is in the interests of justice to do

¹ [2024] NSWCCA 105.

so, noting that the effect of a contravention such as serious injury or death may not be realised for some time as illustrated in the above case.

Amendments to the *Workers Compensation Act 1951*

The *Workers Compensation Act 1951* (WC Act) establishes the regulatory framework for the ACT's private sector workers' compensation scheme. The scheme provides for statutory workers' compensation entitlements and supports in the event of a work-related injury, illness or death. Specifically, the WC Act provides for statutory compensation benefits to be paid to injured workers covering medical treatment, rehabilitation assistance, financial compensation including weekly compensation and lump sum permanent impairment payments to support their recovery and return to work.

Compensation payment to family members following death

The unexpected death of a family member due to a work-related incident not only places an emotional toll on family but can place their household under immediate financial strain.

While existing workers compensation payments are intended to alleviate some of this strain payments often arrive too late to assist with the immediate costs incurred.

The current compensation process can become delayed and complicated where there are multiple financial dependants and a court-based process is needed to apportion payments between financial dependants. The process can be emotionally straining and time consuming, at a time when families are vulnerable to financial hardship.

This Bill introduces new provisions establishing a compensation payment made by insurers or self-insurers, to the domestic partner, children, step-children, parents and step-parents of workers who die at work and who had at some time in the six-months prior to their death, lived with the worker. For example, a person mentioned may demonstrate they lived with the worker at some time within the six-months prior to their death where they have evidence of having the same residential address, such as a utility bill or a drivers licence with the same address as the deceased worker.

The purpose of this provision is to acknowledge and recognise the immediate impact a work-related death has on a deceased worker's household finances and has been identified as a gap in the current statutory compensation framework in the event of a work-related death.

The new compensation payment is intended to:

- support immediate household needs arising from the death of a worker
- be immediate and timely
- provide streamlined access that facilitates early payment recognising that, in most circumstances, these payments are likely to be made on a without prejudice basis.

Section 60 of the *Workers Compensation Regulation 2002* establishes indemnity obligations of licensed insurers for employer's workers compensation liabilities

arising under the WC Act, unless the WC Act expressly provides otherwise. It is noted that self-insurers, as employers, are liable for their workers compensation liabilities arising under the WC Act. This obligation is supplemented by licensing conditions that insurers and self-insurers operating in the ACT must comply with.

Section 133 of the WC Act would allow for this new payment to be made without prejudice and without being offset against any other payments made after liability is determined and would not be recoverable, even if liability is not ultimately accepted. This approach is consistent with other types of without prejudice payments, such as weekly payments, medical and related expenses which are made to ensure timely support without compromising the legal rights of either party. Like those payments, the aim is to provide immediate financial relief while preserving the integrity of the claims process.

Noting that there are very few incidents of work-related deaths which would enliven this provision, it is intended that regulations would be developed in consultation with stakeholders and may include additional classes of eligible family members where gaps are identified. The regulation would also set out guidance for insurers to ensure that the provision operates with flexibility and efficiency in responding to such incidents including information for insurers about how an application can be made, evidentiary requirements for applicants, and other factors necessary to the application and subsequent payment process, noting existing obligations for an injury notice within the WC Act.

A death in the workplace is a notifiable incident for the purposes of ACT WHS laws with an obligation on employers to notify the regulator immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred. The regulator is empowered by the WHS law to investigate contraventions, including if there is a failure to notify the regulator in the case of workplace deaths. This obligation, together with the insurer and self-insurer licence conditions, ensure that families of deceased workers are adequately protected with appropriate recourse in the event of insurer non-compliance.

Removal of barriers for workers who contract HIV/AIDS

Sex work in the ACT is regulated under the *Sex Work Act 1992*. The Sex Work Code of Practice² identifies exposure to sexually transmitted infections as a hazard of the sex work industry.

The WC Act provides for entitlements for lump sum permanent impairment compensation where a worker has suffered a loss listed within Schedule 1. This is in addition to weekly economic loss compensation that workers are entitled to while they are unable to work. However, section 60 of the WC Act currently excludes entitlement to permanent impairment compensation where the contraction of HIV/AIDS arises from voluntary sexual activity or illicit drug use.

The term “voluntary” is used throughout the WC Act referring to an individual who does not receive payment for the work they perform. The accompanying explanatory

² [Work Health and Safety \(Sex Work Code of Practice\) Approval 2023](#).

statement relating to the exclusionary provision uses the term “consensual” sexual activity rather than voluntary when explaining the intention of section 60. As this provision does not require the sexual activity to be one of misconduct, it may be interpreted as excluding sex workers participating in work-related sexual activity from receiving permanent impairment benefits should they contract HIV/AIDS.

In contrast, workers with other injury types who may be excluded from receiving compensation generally due to serious and wilful misconduct, such as alcohol use, are not excluded if the injury results in permanent disablement.

Currently, NSW is the only other jurisdiction other than the ACT to restrict access to permanent impairment benefits for HIV/AIDS injuries resulting from voluntary sexual activity or illicit drug use. Provisions in Western Australia restrict all access to permanent impairment benefits until HIV develops into AIDS, regardless of how it is contracted.

The current exclusion of workers within the ACT from permanent impairment workers’ compensation benefits creates inconsistent treatment of injured workers based on their injury type and may perpetuate unnecessary stigma against workers with HIV/AIDS. The removal of this provision under this Bill would ensure consistent treatment of injured workers based on injury type and increased support for workers in high-risk industries by removing barriers to workers with HIV/AIDS accessing permanent impairment benefits.

Medical Referees

The WC Act requires medical referees to certify injuries as permanent where workers wish to reside outside of Australia and retain compensation benefits. Section 201 of the WC Act currently allows the Minister to appoint one or more doctors as a medical referee for the purposes of:

- certifying incapacity where it is likely to be permanent, if the worker stops living in Australia
- assisting with conciliation for medical disputes, and
- assessing and reporting on medical matters during arbitration.

Only those appointed may exercise the function of a medical referee. On 18 April 2024, delegations under the WC Act were updated to allow the WHS Commissioner to appoint medical referees³. This change occurred due to the benefit of the regulator having operational oversight given the role of medical referees as experts in dispute resolution processes and was intended to be on an interim basis while legislative provisions were reviewed.

In addition, a jurisdictional scan has identified that no other jurisdiction requires medical referee certification for compensation to continue while a worker resides outside of Australia.

This Bill introduces amendments that:

³ [Legislation \(Workers Compensation\) Delegation 2024 \(No 1\)](#).

- contemporise provisions to streamline the process for workers, removing the need for additional doctor's appointments as well as the need for additional administrative burden, where a worker may reside outside of Australia but still in certain circumstances be entitled to receive weekly compensation; and
- provides for the WHS Commissioner to appoint medical referees as part of administering the WC Act.

Limitation period – time for commencing legal proceedings

This Bill progresses an amendment that corrects a historical error in section 202(1) of the WC Act when referring to the prosecution limitation period for offences relating to not holding a compulsory insurance policy.

The time limits for commencing legal proceedings are set out in section 202 of the WC Act and in the main require that proceedings be commenced within one year, except for certain offences specified in section 202(1) of the Act for which a 5 year time limit for commencing proceedings applies.

Historically, prior to December 2009, the requirement for an employer to hold a compulsory insurance policy and associated offences were set out in the same section, under section 147, hence the reference to this section in section 202 of the Act. Section 202 retained the reference to section 147 of the WC Act in error, when the offences relating to non-compliance with holding a compulsory insurance policy were amended in December 2009 and separated from section 147 into section 147A.

Importantly, the content and purpose of section 202(1) in attaching time limits to commencing proceedings for offences applying to section 147 was clearly intended to apply to the relevant offence provision, otherwise it would be void. Further and based on supplementary materials at the time, the changes made in December 2009 were not intended to override the existing and longstanding policy intention that had applied since July 2002 when it was decided to extend the time limits from 2 years to 5 years for offences of not holding a compulsory insurance policy, amongst other offences.

Recent compliance activities of the regulator have identified issues with the time for beginning prosecutions for this offence should it be strictly interpreted as being limited to one year.

This shorter, more restrictive timeframe creates difficulty for the regulator in pursuing compliance and enforcement activities, including prosecutions, particularly, in light of the complexities involved relating to evidence requirements and the timing of investigations. From a jurisdictional comparison, no other jurisdiction maintains a time limit of one year to commence prosecutions for similar offending.

Functions of the WHS Commissioner – WC Act and *Dangerous Substances Act 2004*

Section 153 of the WHS Act grants the WHS Commissioner/regulator, the powers and functions of an inspector. Similar provisions are introduced by the Bill to confirm

that the regulator of the WC Act and the *Dangerous Substances Act 2004* (DS Act) has the same power and function as an inspector. This amendment would align with the WHS legislative framework and establish a consistent regulatory approach.

Amendments to the *Long Service Leave Act 1976*

The *Long Service Leave Act 1976* (LSL Act) provides employees in the ACT with entitlements to long service leave based on a period of continuous service with the same employer. It outlines eligibility criteria, the amount of leave accrued, how leave is granted and paid, and provisions for pro rata entitlements. The LSL Act ensures that long-serving employees are paid their accrued entitlements, supporting workforce retention and employee wellbeing. Amendments made to the Act will strengthen the compliance provisions under the LSL Act.

This Bill makes amendments that enhance the compliance and enforcement tools available for use in enforcing compliance with the LSL Act, in alignment with existing tools used in similar regulatory frameworks.

Existing offences under the LSL Act include a strict liability offence under section 8(1) of the Act for not paying long service leave entitlements when long service leave is taken.

Where employment is terminated or ends for any reason, including death, and long service leave has accrued this must be paid currently under section 8(4) of the LSL Act. This Bill moves this provision to section 11A of the Act which deals with payments in lieu of leave being taken and introduces a strict liability offence for failure to pay long service leave entitlements within 90 days following the cessation of employment.

Amendments to the *Long Service Leave (Portable Schemes) Act 2009*

The *Long Service Leave (Portable Schemes) Act 2009* (Portable Schemes Act) provides for access to portable long service leave entitlements for recognised periods of service within a covered industry. There are four covered industries for portable long service leave, namely the building and construction industry, the service industry (cleaning service industry), community sector industry and security industry.

The relevant schedules relating to each covered industry provides that the Long Service Leave (ACT Leave) Authority must pay an applicant any amount payable pursuant to the relevant schedule no later than 21 days after the worker's application has been made.

This Bill makes amendments that will provide the flexibility for an applicant to either receive the payment of their portable long service leave entitlements no later than 21 days after their application is made, or within 14 days before the proposed leave being taken, as agreed between the ACT Leave Authority and the applicant.

This policy will ensure that for each of the portable schemes:

- the payment of entitlements better aligns with the applicant's usual pay cycle around the commencement date of the period of long service leave being requested

- the applicant will have funds available for the requested period of long service leave
- an employer's operational requirements will be assisted, where the employer requests their workers seek approval of long service leave well in advance, and
- there is timing flexibility to manage tax implications for the applicant.

This Bill also includes amendments to ensure the administration of the portable long service scheme for the services sector operates as intended. This relates to the expansion of the service industry and clarifies that the scheme only applies to employers who operate predominantly within specific covered industries rather than everyone who operates mixed businesses which may undertake some work activities that would be viewed as activities under the covered industries. This ensures alignment with the new industries that will join the services industry scheme from 1 July 2026, namely hairdressing and beauty services and accommodation and food services, which have been defined using a main activity test framework under the Australian and New Zealand Standard Industrial Classification (ANZSIC).

This Bill also makes a technical amendment to remove subsection 12 (4)(b) requiring an instrument made by the Minister declaring additional coverage under the scheme to have a stated period of the declaration. The decision to provide additional coverage for an employer into the scheme ensures worker recognition within a particular industry, promotes mobility and attracts and helps retain skilled workers within a covered industry and is made where coverage is consistent with the objectives of the Portable Schemes Act. Unless a particular employer no longer operates within a specified industry, the expiry of their coverage is not only contrary to the objects of the Act but greatly disadvantages those workers from ensuring their entitlements are portable.

The removal of the subsection does not mean that a period cannot be expressed, should it be necessary. This is also in contrast to the mechanism of section 13, where the Minister has the power to limit coverage in the scheme. Limiting coverage is only temporary in nature and not intended to be used as a permanent mechanism to carve out a specific employer, employee, work or activity.

Amendments to the *Public Sector Workers Compensation Fund Act 2018*

Section 12 of the *Public Sector Workers Compensation Fund Act 2018* (PSWC Act) provides for how funds held in Public Sector Workers Compensation bank accounts may be expended. An amendment is introduced under this Bill to clarify that monies held in PSWC bank accounts may be spent on reasonable costs in exercising the Commissioner's functions which expressly includes activities that promote and support injury prevention initiatives and activities across the ACT Public Service that aim to reduce incidents of work injuries.

CONSULTATION ON THE PROPOSED APPROACH

Stakeholders consulted regarding the proposed amendments within this Bill include the Chief Minister, Treasury and Economic Development Directorate, the Justice and Community Safety Directorate, insurers and self-insurers, ACT Leave Authority, the WHS Commissioner, WorkSafe ACT, Work Health and Safety Council and broader affected industries and business.

CLIMATE IMPACT

This Bill will not have any climate impact.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Bill, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (the HR Act). This Bill is consistent with human rights.

Rights engaged

This Bill engages the following rights:

- Section 8 – Recognition and equality before the law (*promoted*)
- Section 8 – Recognition and equality before the law (*limited*)
- Section 9 – Right to life (*promoted*)
- Section 11 – Protection of the family and children (*promoted*)
- Section 11 – Protection of the family and children (*limited*)
- Section 12 – Privacy and reputation (*promoted*)
- Section 12 – Privacy and reputation (*limited*)
- Section 22 – Right in criminal proceedings (*limited*)
- Section 27 – Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities (*limited*)
- Section 27B – Right to work and other work-related rights (*promoted*)
- Section 27C – Right to a healthy environment (*promoted*)

Rights promoted

WHS Act amendment - Right to life

The right to life imposes a positive obligation on public authorities to take appropriate steps to protect individuals from reasonably foreseeable threats to life and serious harm. The amendments to the WHS Act promote this right by strengthening the legal framework for identifying, responding to, and preventing serious workplace incidents.

The Bill clarifies what is defined as a “serious injury or illness” and “dangerous incident”. This clarification ensures that a broader range of serious risks to life and health are captured and subject to regulatory oversight. The introduction of a mutual

notification duty between PCBUs and those with management or control of a workplace further supports the right to life. By requiring immediate communication between duty holders upon becoming aware of a notifiable incident, the amendment facilitates faster responses, better coordination, and more effective risk mitigation. This is particularly important in complex workplaces where multiple parties may hold overlapping responsibilities.

WC Act amendments – Right to recognition and equality before the law

This right is also promoted by the amendments to the WC Act relating to the recognition and extension of HIV/AIDS compensation. As it is currently drafted, section 60 of the WC Act carves out workers who contract HIV/AIDS through voluntary sexual activity or illicit drug use from receiving compensation under section 51 of the WC Act. Disability, and choice of profession, trade, occupation and calling are protected attributes under the *Discrimination Act 1991*. A person who has HIV/AIDS falls within the definition of disability under section 5AA of the *Discrimination Act 1991* (i.e. the presence in the body of organisms that cause or are capable of causing disease and illness). Sex work falls within the definition of profession, trade, occupation and calling. The removal of section 60 ensures that workers' compensation legislation aligns with the protections in the *Discrimination Act 1991* by ensuring that people are not treated unfavourably based on either the type of disease they have (HIV/AIDS) or their job (sex work).

This amendment is reflective of a shift toward non-discriminatory treatment of all medical conditions or injuries under the WC Act. The WC Act will treat those who contract HIV/AIDS through work under a unified framework, promoting equality before the law and reducing stigma. This amendment further promotes this right by ensuring fair access to compensation for affected workers and assists in streamlining the claims process through adjusting the evidentiary requirements for such injury.

WC Act amendments – Right to protection of the family and children

The right to protection of the family recognises the importance of the family unit in making up society and the benefits that come from preserving family relations. Children have special rights under human rights law considering their vulnerabilities.

The amendment recognises the emotional and financial stress that arises in the aftermath of a workplace fatality and the importance of family stability by directing immediate support to close family dependents, particularly children, who may be left vulnerable due to the loss of a household member.

This change promotes the right to protection of family and children by ensuring that affected families receive timely support, enabling them to focus on grieving and recovery without the added burden of financial insecurity. It reflects a humane and rights-based approach to workplace regulation, consistent with the ACT Government's obligations under the HR Act.

WC Act amendments – Right to work and other work-related rights

Removing the carve out which excludes claimants who contract HIV/AIDS from accessing workers' compensation promotes the right to work by providing parity to

those who may contract the disease through “voluntary sexual activity” or “illicit drug use”. Section 27B (2) and (5) of the HR Act provides that everyone has the right to just and favourable conditions of work and everyone is entitled to enjoy such rights without discrimination. This includes not being discriminated against on the grounds of profession, trade occupation or calling (such as sex work), or the type of disease (such as HIV/AIDS) that may have been contracted in a work-related setting.

This amendment supports equality for all workers across industries by ensuring consistent permanent impairment entitlements under the ACT workers’ compensation scheme. It supports both workplace safety and the dignity of affected workers.

LSL Act Amendments – Right to work and other work-related rights

The introduction of an offence relating to the non-payment of long service leave entitlements after the cessation of employment promotes the right to work and other work-related rights pursuant to section 27B of the HR Act. Everyone has the right to the enjoyment of just and favourable conditions of work. This amendment engages and promotes this right by reinforcing the right to fair and favourable conditions of work, including paid leave entitlements. By introducing an offence where an employer fails to pay long service leave entitlement following the cessation of employment, the amendment strengthens protections for workers and supports their receive of entitlements they lawfully accrued. This contributes to greater financial stability for workers and reinforces the integrity of the long service leave framework.

DS Act amendments - Right to a healthy environment

The amendment supports the right to a healthy environment, namely the right to a non-toxic environment, by strengthening the regulation of dangerous substances by requiring inspectors and the WHS Commissioner to assess environmental impacts as part of their enforcement responsibilities. This marks a shift from a purely compliance-driven approach to one that incorporates ethical and rights-based perspectives on environmental health and safety. It also reinforces the ACT Government’s commitment to a progressive human rights agenda by integrating environmental protection and workplace safety into its broader governance framework.

Rights Limited

This Bill engages and limits a range of human rights. Each right that is limited is assessed below to ensure that it is based on evidence and is reasonably proportionate to achieve a legitimate purpose.

LSL, DS Act and WC Act amendments – Right to privacy and reputation

1. Nature of the right and the limitation (s28(2)(a) and (c))

The following sections of the Bill limit the right to privacy and reputation:

LSL Act amendments - enforcement and compliance –	The introduction of such powers may limit the right to privacy and reputation. These powers enable authorised officers to access private records and compel individuals to disclose information, which may constitute an interference with their privacy.
---	---

sections 13C and 13CC	<p>Under section 13C, authorised officers are permitted to enter workplaces or public premises at any reasonable time without the need for prior consent. They may also enter land for the purpose of seeking consent to access buildings. While residential premises are explicitly excluded, this provision still allows for unannounced access to commercial or semi-private spaces. Such access has the potential to expose sensitive business operations or personal information, raising concerns about the protection of privacy in these environments.</p> <p>In addition, section 13CC empowers officers to direct individuals to produce documents, answer questions, or otherwise assist with investigations. This includes the production of materials not located on the premises, such as audio or video recordings. The compelled disclosure of personal, commercial, or legally sensitive information under this provision represents a direct interference with privacy and may also affect an individual's reputation.</p> <p>Together, these provisions expand the investigatory powers of authorised officers in ways that may impact the privacy rights of individuals and organisations. While intended to support compliance and enforcement, the scope and nature of these powers require careful consideration to ensure that privacy and reputational rights are adequately protected.</p>
DS Act amendment – Insert section 207 (1)(c)	<p>Providing the WHS Commissioner with the same function and powers as an inspector under the DS Act, may limit the right to privacy, particularly in workplace investigations involving hazardous materials or suspected breaches. These powers include the authority to enter workplaces and residential premises without prior notice, require the production of documents, conduct interviews, and seize items believed to be dangerous or relevant to an investigation.</p> <p>For example, inspectors may access private communications, such as emails or board minutes, if they reasonably believe the information relates to a breach of WHS law. They can also enter residential premises if they suspect it is used as a workplace or involves the storage of dangerous substances, without the occupants' consent. These actions, while intended to protect public safety and enforce compliance, can intrude on personal privacy by exposing sensitive or personal information and disrupting private spaces.</p> <p>Although safeguards exist, such as requirements for inspectors to identify themselves and respect legal professional privilege, the broad scope and discretionary nature of these powers mean that individuals may be compelled to disclose information that they would otherwise have the right to keep private.</p>
WC Act amendment –	<p>This amendment introduces a new subsection which provides the regulator is also deemed to be an inspector. This change will clarify that the regulator, under the WC Act, holds the power and</p>

New section 188 (3)	responsibilities of an inspector. This will enable the regulator to directly exercise investigative and enforcement powers without requiring a separate appointment as an inspector. This may limit individuals' right to privacy, as it allows the regulator to directly access sensitive personal information, such as medical records, employment details, and compensation claims, without intermediary oversight. While this facilitates more efficient investigations into potential breaches or misconduct, it also increases the scope for intrusion into private lives.
---------------------	--

2. Legitimate purpose (s28(2)(b))

LSL Act amendments - enforcement and compliance – sections 13C and 13CC	<p>Despite privacy concerns, the powers granted to authorised officers are essential for the effective enforcement of the Act. Long service leave entitlements are a statutory right, and non-compliance can result in significant financial harm to employees. The enforcement framework established within this Bill would encourage employers to maintain accurate records, meet their obligations, and hold them accountable when they fail to do so. Authorised officers play a critical role in this process by investigating complaints, auditing records, and initiating enforcement actions where necessary.</p> <p>The increasing complexity of long service leave obligations, due to variations across jurisdictions and employment arrangements, has led to a rise in compliance errors and underpayments. Regulators have responded by adopting a more proactive enforcement approach, including audits and prosecutions. The investigatory powers introduced by the amendments are therefore necessary to detect and address breaches effectively, particularly where voluntary compliance is lacking.</p> <p>While these powers do limit privacy rights, they assist in the objective of ensuring lawful entitlements are upheld. Safeguards such as identity verification requirements and limits on entry to residential premises help mitigate the impact on privacy.</p> <p>The changes also serve the purpose of responding to public interest by promoting transparency, accountability, and fairness in the administration of long service leave entitlements. They also act as a deterrent against non-compliance, ensuring that employers are aware of their obligations and that the regulator has tools necessary to uphold the law.</p>
DS Act amendment – Insert new section 207 (1)(c)	The amendment granting the regulator the functions and powers of an inspector reflects a deliberate policy decision to enhance enforcement and compliance capabilities in high-risk regulatory environments. This approach is consistent with the objectives outlined in section 6 of the DS Act, which aims to eliminate or minimise risks associated with hazardous substances and ensure timely, effective regulatory intervention.

	<p>By empowering the regulator to act directly, without needing to wait for an inspector to be appointed, the amendment supports swift enforcement responses in complex or high-risk scenarios. These may involve substances such as asbestos, acids, solvents, welding fumes, and radioactive materials, where delays in action could result in serious harm to people, property, or the environment. The ability to intervene promptly is essential to uphold the DS Act's core purpose of protecting public health and safety, including the right to a healthy environment.</p> <p>This reform also ensures consistency with the enforcement principles established under section 153 of the WHS Act, which recognises the need for regulators to be fully empowered to act decisively. Extending similar powers to apply under the DS Act eliminates ambiguity about the regulator's operational authority and reinforces its role as an active compliance and enforcement agency, not merely an administrative body.</p> <p>While the expanded powers may involve increased access to sensitive information and operational authority, the resulting limitation on privacy helps to prevent harm and ensure safety. The amendment also closes any gap between the powers of inspectors and the regulator, providing clarity and consistency across enforcement mechanisms. This enables regulatory responses to be more coordinated, effective, and aligned with the overarching goals of the DS Act.</p>
WC Act amendment – New section 188 (3)	<p>Clarifying and refining the regulator's powers to include inspector functions and powers supports the objective of maintaining the integrity of the workers compensation system, protecting vulnerable claimants, and ensuring that entitlements are delivered fairly and lawfully, therefore supporting the right to work and work-related rights. It also reinforces the regulators role as a proactive compliance authority, capable of initiating enforcement action where necessary to uphold public trust and accountability. Importantly, the amendment closes any legal ambiguity between the powers of inspectors and the regulator, providing clarity and consistency in the administration of the Act.</p> <p>The WC Act amendment supports this objective of strengthening regulatory oversight and compliance, by formally designating the regulator as an inspector, thereby expanding their ability to oversee workers' compensation matters. Although these changes may impact privacy through increased access to sensitive information, they serve a legitimate and pressing purpose in a free and democratic society by safeguarding public safety, protecting worker rights, and ensuring accountability in high-risk environments.</p>

3. Rational connection between the limitation and the purpose (s28(2)(d))

LSL Act amendments - enforcement and compliance – sections 13C and 13CC	<p>The amendment which introduces expanded investigatory powers for authorised officers under sections 13C and 13CC, is connected to the LSL Act's core objective of ensuring employees receive their lawful entitlements. These powers enable officers to enter workplaces without prior consent and compel individuals to produce documents or information relevant to compliance investigations. While these provisions may interfere with privacy and reputation, particularly through access to sensitive business records or personal data, they are necessary to support timely and effective enforcement, otherwise officers may not be able to access the needed information.</p> <p>In practice, these powers allow officers to respond swiftly to suspected breaches, especially in cases where employers may be unwilling to cooperate or where records are incomplete or concealed. Access to employment records, service histories, and payroll data is critical for verifying whether workers have accrued entitlements and whether employers have fulfilled their obligations. For example, if an employee submits that they were denied long service leave despite meeting eligibility criteria, authorised officers can enter the workplace to inspect rosters and payroll records and compel the employer to produce off-site documentation. This direct access ensures that investigations are not delayed, and that entitlements are paid. Without the amendment, investigators would need to request access to records and wait for voluntary cooperation. In circumstances where the employer delays or refuses, enforcement would be stalled, and the employees right remain unaddressed.</p> <p>Although the powers limit privacy, the interference is directly connected and aimed at protecting workers' rights and ensuring compliance with the law. The powers are targeted as they only apply to investigations related to compliance of long service leave entitlements and uphold accountability through making officers subject to oversight and compliance with procedural fairness and general privacy laws.</p> <p>The amendment would enhance the regulator's capacity to act decisively and consistently, aligning enforcement mechanisms with broader public interest objectives such as ensuring compliance and protecting employee entitlements.</p> <p>A similar approach has been adopted in Victoria, where inspectors are vested with strong enforcement powers under the <i>Long Service Leave Act 2018</i>. This model has demonstrated that empowering regulators with proactive investigatory authority leads to more effective enforcement outcomes. It supports a well-resourced and responsive compliance framework, enabling timely interventions and reinforcing the integrity of long service leave entitlements.</p>
---	--

<p>DS Act amendment – Insert section 207 (1)(c)</p>	<p>The amendment aligns with national regulatory principles, such as proportionality and consistency, by ensuring that enforcement actions are evidence-based and appropriately scaled to the level of risk. By providing the WHS Commissioner with the same functions and powers as an inspector under the WHS Act, this achieves the objective of safeguarding health, safety, and the environment in workplaces where hazardous substances are present. These powers include entering workplaces and, in certain circumstances, residential premises without prior notice; compelling the production of documents; conducting interviews; and seizing items relevant to an investigation. While these actions may interfere with the right to privacy, particularly where they involve accessing personal communications or entering private spaces, they are necessary to enable timely and effective regulatory responses to potential breaches.</p> <p>Further, the ACT’s Compliance and Enforcement Policy 2025-2029⁴ explicitly outlines the WHS Commissioner’s role in administering the DS Act. Under the policy, the WHS Commissioner is empowered to use a range of enforcement tools such as inspections, investigations and seizure powers to ensure duty holders meet their obligations. Through this amendment, the WHS Commissioners administrative and enforcement responsibilities are reflected and supported.</p> <p>For example, if the WHS Commissioner reasonably suspects that a residential garage is being used to store dangerous chemicals without authorisation, the ability to enter and inspect the premises without delay is critical to preventing harm. Similarly, accessing internal communications such as board minutes or emails may be essential to uncover systemic non-compliance or concealment of risks.</p>
<p>WC Act amendment – New section 188 (3)</p>	<p>Conferring inspector functions and powers on the WHS Commissioner introduces a limitation on the right to privacy. It allows the WHS Commissioner to directly access sensitive personal information, such as medical records, employment histories, and compensation claims, without intermediary oversight. This expanded access increases the potential for intrusion into individuals’ private lives, particularly in the context of workplace investigations or suspected misconduct.</p> <p>However, this limitation is rationally connected to the pressing objective of maintaining the integrity of the workers compensation system and protecting the health and safety of workers. By enabling the WHS Commissioner to act swiftly and independently, the amendment supports more efficient investigations, timely enforcement, and proactive oversight, particularly in sensitive cases involving vulnerable claimants. It also reinforces the WHS Commissioner’s role as a robust</p>

⁴ [Work Health and Safety \(Office of the Work Health and Safety Commissioner\) Compliance and Enforcement Policy 2025-2029 | Notifiable instruments.](#)

	<p>compliance authority, capable of initiating enforcement action to uphold public trust and accountability.</p> <p>Importantly, the amendment resolves any ambiguity between the powers of inspectors and the regulator, ensuring consistency and clarity in the administration of the law. While the powers granted may impact privacy, they are accompanied by safeguards such as data protection obligations, procedural fairness, and oversight mechanisms, which help ensure that the interference is proportionate and rights-respecting. As such, the amendment is specifically related to limiting individual privacy whilst recognising the need to for broader public interest and ensuring a fair, safe, and accountable workers compensation system.</p>
--	---

4. Proportionality s28(2)(e)

<p>LSL Act amendments - enforcement and compliance – sections 13C and 13CC</p>	<p>The compliance and enforcement powers introduced in sections 13C and 13CC of the LSL Act represent the least restrictive means reasonably available to achieve the legitimate objective of ensuring employees receive their lawful entitlements. These provisions allow authorised officers to enter workplaces and request information necessary to investigate potential breaches. While this may limit the right to privacy, particularly through access to sensitive employment records or commercial information, less restrictive alternatives, such as relying solely on voluntary cooperation or complaint-based investigations, have proven insufficient. These approaches often result in delayed or incomplete investigations, especially where employers are uncooperative or where vulnerable workers may be reluctant to come forward.</p> <p>The chosen approach enables timely, proactive enforcement while incorporating safeguards to minimise the impact on privacy. For example, sections 13CA and 13CB require officers to identify themselves and inform occupiers of their rights. Entry to residential premises is explicitly excluded, and consent-based inspections must respect the power imbalance that may affect a person's willingness to comply. Additional safeguards, while not expressly provided for, include the ability for a person to withdraw consent, request a more suitable time for inspection, or have a support person present. Information requests are limited to what is reasonably required, and officers must act in accordance with procedural fairness and privacy obligations. These measures ensure that the powers are targeted and proportionate. The framework also considers the potential impact on vulnerable groups, such as migrant workers or those in insecure employment, by enabling regulators to intervene without placing the burden of enforcement solely on the individual who may not be aware of their rights or may not have the resources to pursue a complaint. In this context, the amendment strikes a necessary</p>
--	---

	balance between protecting privacy and upholding the public interest in fair and lawful workplace practices.
DS Act amendment – Insert new section 207 (1)(c)	<p>This amendment creates a tension between regulatory enforcement and the individual's right to privacy, which must be carefully balanced to ensure proportionality and accountability. While this amendment may increase access to sensitive information and expand operational powers, the resulting limitation on privacy is proportionate to the legitimate objective of protecting public health, safety, and the environment. In this context, any intrusion into privacy is not arbitrary but serves a clear and compelling public interest in preventing harm to workers, the community, and the environment.</p> <p>Although civil enforcement mechanisms and voluntary compliance programs are available, they are often insufficient in situations involving serious or imminent risks. For example, civil enforcement tools like improvement notices, enforceable undertakings, or compensation claims are typically reactive and depend on voluntary compliance or post-incident remedies. In contrast, serious WHS risks, such as exposure to dangerous substances, structural hazards, or workplace violence, require immediate and proactive intervention. These situations demand powers that allow regulators to enter premises, inspect conditions, and secure evidence without delay. Other measures lack the urgency, authority, and deterrent effect needed in such cases, and may be ineffective where duty holders are uncooperative or where risks escalate rapidly. The limitation on the right to privacy is proportionate to mitigating any serious risk posed by hazardous substances, and the powers are clearly directed toward achieving the DS Act's purpose of protecting public health and safety. Therefore, inspector powers are essential to uphold safety standards in high-risk environments, and no less restrictive alternative would achieve the same regulatory outcome.</p> <p>Although the discretionary nature of these powers means that individuals may be compelled to disclose information that they would otherwise have the right to keep private, there are adequate safeguards to ensure the limitation is the least restrictive option available. Under the DS Act, currently several safeguards are in place to ensure that the exercise of inspector powers, including those conferred on the WHS Commissioner, is balanced and minimally intrusive. When inspections are conducted with consent, a PCBU has the right to withdraw consent at any time, can seek that the inspection occur at a more suitable time or have another person present. Inspectors must identify themselves, explain the purpose of their visit, and inform occupiers of their rights, ensuring transparency and procedural fairness. Information requests must be limited to what is reasonably necessary for the investigation, and legal professional</p>

	<p>privilege is respected. These safeguards help ensure that the powers are carefully targeted, proportionate to the risks involved, and exercised in a manner that protects privacy while enabling effective regulatory oversight. Sensitive information obtained during inspections, such as medical records or employment data, must be handled in accordance with confidentiality and data protection obligations including section 271 of the WHS Act and sections 22 and 23 of the <i>Territory Records Act 2002</i>. These measures help ensure that the exercise of regulatory powers is not arbitrary, and that privacy is protected while enabling effective enforcement in high-risk environments.</p>
<p>WC Act amendment – New section 188 (3)</p>	<p>The amendment to the WC Act through the insertion of section 188 (3), formally designates the regulator as an inspector, thereby expanding their powers to oversee and enforce compliance with workers' compensation obligations. While this designation limits the right to privacy, particularly through access to sensitive personal information such as medical records, employment history, and compensation claims, it is a proportionate response to the objective of protecting worker entitlements and maintaining the integrity of the compensation system. Less restrictive alternatives, such as relying solely on existing inspector powers or complaint-based investigations, are not reasonably effective in addressing systemic non-compliance or ensuring timely intervention in high-risk cases. The powers conferred are narrowly targeted and supported by a range of safeguards to minimise the impact on privacy.</p> <p>These include confidentiality and data protection obligations under section 271 of the WHS Act and sections 22 and 23 of the <i>Territory Records Act 2002</i> and procedural fairness requirements that ensure information is only accessed when reasonably necessary and for lawful purposes. Additional safeguards include requiring the WHS Commissioner to demonstrate reasonable grounds before accessing personal information, limiting access to what is strictly necessary for the investigation, and ensuring oversight through internal review processes and judicial mechanisms.</p> <p>The amendment also ensures consistency with existing WHS powers, closes any ambiguity between the roles of inspectors and the regulator, and reinforces the WHS Commissioner's role as a proactive compliance authority. Importantly, these measures are designed to uphold public trust, protect vulnerable claimants, and ensure that any interference with privacy is justified, necessary, and proportionate in a free and democratic society.</p>

LSL Act, WHS Act and WC Act amendments - rights in criminal proceedings

1. Nature of the right and the limitation (s28(2)(a) and (c)).

LSL Act amendment – abrogation of privilege against self-incrimination	<p>Under section 22 (2)(i) of the HR Act, individuals charged with a criminal offence have the right not to be compelled to testify against themselves or confess guilt. This right is a fundamental part of criminal proceedings, ensuring fairness by upholding the presumption of innocence and placing the burden of proof on the prosecution. It protects individuals from being coerced into providing evidence that could be used against them in a criminal trial.</p> <p>The proposed amendment to the LSL Act, which abrogates this privilege by allowing authorised officers to compel individuals to provide information, even if it may be self-incriminating, constitutes a clear limitation on this right. Under section 28(a), the nature of the right is recognised as essential to a fair trial and due process.</p>
LSL Act amendment creation of strict liability offence under section 11A	<p>Every person charged with a criminal offence has the right to the presumption of innocence until proven guilty according to the law. This amendment creates a new strict liability offence under section 11A of the LSL Act for employers who fail to pay long service leave entitlements within 90 days after the person's employment ceases.</p> <p>This amendment places a clear limitation on the right to be presumed innocent under the HR Act because the prosecution is not required to prove fault, such as intention, knowledge, recklessness, or negligence, on the part of the accused. Instead, the employer may be found guilty solely based on the failure to meet the statutory obligation, regardless of the circumstances or reasons for non-compliance. This removes the usual burden on the prosecution to prove that the employer acted with culpability, thereby limiting the presumption of innocence.</p>
WHS Act amendment – statutory limitation period	<p>The amendment to section 232 of the WHS Act introduces a discretionary power for the court to allow prosecutions of WHS offences to proceed outside the statutory limitation period, where it is satisfied that doing so is in the interests of justice.</p> <p>The amendment may limit the right in criminal proceedings to be tried without reasonable delay under section 22 (2)(c) of the HR Act by allowing prosecutions to take place outside the statutory limitation period of commencing 2 years from when the offence first comes to the notice of the regulator. The right of the accused to be tried without undue delay is not only designed to avoid keeping persons too long in a state of uncertainty about their fate, but also to serve the interests of justice.</p>
WHS Act amendment – s39A (1) and (2)	<p>The Bill engages and limits the right to the presumption of innocence through the application of strict liability provisions under sections 39A (1) and 39A (2).</p>

strict liability offences	<p>Strict liability provisions generally engage and limit the right to be presumed innocent as they remove the need for prosecution to prove an accused person's fault (i.e. the mental element of intent, knowledge or recklessness) in relation to an offence generally or for elements of an offence. It is noted that this does not have the automatic effect of reversing the burden of proof, just remove the fault element.</p> <p>Under sections 39A (1) and (2), PCBU's must, immediately after becoming aware of a notifiable incident activating the duty, ensure that a person with a corresponding duty is notified of the incident. A breach of either duty under these provisions, is an offence under the WHS Act, attracting a maximum penalty of \$14,000 for individuals and \$70,000 for body corporate organisations which exceeds the recommended cap of 50 penalty units (\$8,000) for individuals.</p> <p>Strict liability applies to each physical element of both offences created under section 39A (1) and (2), as per section 12A of the WHS Act. Section 12A establishes that strict liability applies to each physical element of each offence, unless otherwise stated in the clause containing the offence.</p>
WC Act amendment – statutory limitation period	<p>The amendment limits the right in criminal proceedings to be tried without unreasonable delay (section 22 (2)(c)). The right to be tried without unreasonable delay ensures that individuals facing criminal charges are not subject to prolonged uncertainty or procedural disadvantage. The right is procedural in nature and safeguards the integrity of the justice system, particularly for accused persons.</p> <p>The amendment to section 202(1) of the WC Act adds the offence for failure to hold compulsory insurance under section 147A to the list of offences for which a prosecution must be started no later than 5 years after the day, or the last day, the offence is committed. Due to this offence being unintentionally omitted from section 202(1), the limitation period for prosecution of section 147A offences may currently be interpreted as being within the scope of section 202(3), which provides that a prosecution may begin within a year after the commission of the offence. Although prosecution for the section 147A offence was always intended to have a five-year limitation period, this amendment will technically result in a limitation on the right to be charged without unreasonable delay by extending the limitation period from one year to five years.</p>

2. Legitimate purpose (s28(2)(b))

The purpose of each amendment within the Bill which limit the rights in criminal proceedings are detailed below:

LSL Act amendment – abrogation of	This amendment serves an important public purpose, being to strengthen the enforcement and compliance mechanisms within the WHS framework. By granting authorised officers the power
-----------------------------------	--

privilege against self-incrimination	<p>to compel individuals to provide information, even if it may be self-incriminating, the amendment aims to enhance the effectiveness of investigations into potential breaches of WHS laws. This can significantly improve the ability of regulators to uncover unsafe practices, identify systemic risks, and intervene before harm occurs. It also ensures that individuals and organisations are held accountable for maintaining safe workplaces, which is essential for protecting the health and wellbeing of workers and the broader community.</p> <p>From a policy perspective, this approach aligns with the public interest in promoting safe and healthy working environments. It reflects a proactive stance on WHS compliance, recognising that timely access to accurate information is critical for preventing workplace incidents and ensuring that safety standards are upheld. While this may limit certain individual rights, such as the privilege against self-incrimination, the amendment seeks to balance those rights against the broader societal need for robust WHS enforcement, particularly in high-risk industries or situations where non-disclosure could lead to serious harm.</p> <p>This also supports the WHS Commissioner’s powers to compel information and require attendance to answer questions. These powers are deployed to support the exercise of commissioner’s functions, particularly individual advocacy and conducting systemic inquiries. These functions require the commissioner to be able to gather relevant information, even if that information may incriminate the person giving it. This is necessary to identify systemic failures, enable enforcement action, and protect workers from ongoing harm, even if it involves balancing individual rights with the public interest of safe and accountable workplaces.</p>
LSL Act amendment creation of strict liability offence under section 11A	<p>The legitimate purpose of the provision is to support enforcement of the measures in the legislative amendments to protect workers’ rights and their employment entitlements.</p> <p>The penalty that may be imposed on commission of an offence is 50 penalty units and is intended to act as a deterrent against employers from delaying or failing to make payment of long service leave entitlements upon cessation of an employee’s employment. The creation of a strict liability offence under section 11A of the LSL Act ensures workers are paid the accrued long service leave entitlements from that employer as and when it falls due, but no later than a reasonable time of 90 days.</p> <p>The intent behind establishing a strict liability offence arises from the regulatory context in which it operates, namely, the protection of workers’ rights and the enforcement of workplace obligations. In such contexts, there is a strong public interest in ensuring that regulatory schemes are consistently observed. The rationale is that individuals and entities, such as employers,</p>

	can reasonably be expected to be aware of their legal obligations due to their professional role and responsibilities.
WHS Act amendment – statutory limitation period	<p>The purpose is to ensure serious WHS offences, particularly those involving latent harm or delayed consequences, can be prosecuted effectively. This supports public safety, regulatory integrity, and justice for affected individuals.</p> <p>The nature of WHS matters often involve long-term exposure to hazardous substances, systemic safety failures, or workplace incidents where the full extent of harm (such as occupational disease or death) may not be immediately apparent. Rigid limitation periods can prevent regulators from pursuing prosecutions and not hold those accountable for breaching WHS laws. The rationale of this amendment is to afford the court with the discretion to extend this limitation, where necessary, so that those responsible are held to account.</p>
WHS Act amendment – s39A (1) and (2) strict liability offences	<p>The purpose of this amendment is to ensure that a duty holder who becomes aware of a notifiable incident under section 38 of the WHS Act notifies the person with management or control of the workplace so that they can ensure the site is not disturbed until an inspector arrives. Preserving the site at which a notifiable incident has occurred is essential to facilitating effective investigation of the incident and therefore promoting the right to life by ensuring future incidents are prevented.</p> <p>Where a defendant can reasonably be expected, because of their professional involvement, to know what the requirements of the law are, and where the standard of behaviour is an objective standard, the mental (or fault) element can justifiably be excluded. The rationale is that individuals who hold work health and safety duties, such as PCBUs, can reasonably be expected to understand their responsibilities owed to workers and the broader public. This contrasts with members of the general public, who are not typically expected to have such awareness. Therefore, a strict liability offence for PCBUs failing to notify each other in these circumstances is considered appropriate.</p> <p>The strict liability offences arise in a regulatory context where, for reasons such as public safety, the public interest in ensuring that regulatory schemes are observed, requires the sanction of criminal penalties. The legitimate purpose of the strict liability provisions is that they seek to protect the health and safety of workers, whilst also acting as a deterrent against PCBUs providing unsafe workplaces and work cultures. The WHS Act imposes health and safety duties on all PCBUs in the Territory, as well as duties to their officers and workers. All PCBUs are required to be aware of their health and safety duties under the WHS Act.</p>
WC Act amendment –	The purpose is to ensure that regulators have sufficient time to investigate and prosecute complex offences involving compulsory insurance obligations. This supports the integrity of

statutory limitation period	the workers compensation scheme and protects injured workers. The amendment extends the prosecution window from 1 year to 5 years. This aligns will the other similar offences within this part.
-----------------------------	--

3. Rational connection between the limitation and the purpose (s28(d))

LSL Act amendment – abrogation of privilege against self-incrimination	<p>The amendment, which allows authorised officers to compel individuals to provide information even if it may be self-incriminating, directly limits the right protected under section 22 (2)(i) of the HR Act. This right is a fundamental safeguard in criminal proceedings, ensuring that individuals are not forced to testify against themselves or confess guilt. It upholds the presumption of innocence and places the burden of proof on the prosecution, thereby protecting individuals from coercion and preserving the integrity of the justice system.</p> <p>Despite this limitation, the amendment is rationally connected to a legitimate public interest objective to enhance WHS enforcement and compliance. The ability to compel information is intended to strengthen regulatory oversight, allowing authorised officers to investigate potential breaches more effectively, identify unsafe practices, and intervene to prevent harm. This connection between the means (compelled information) and the ends (workplace safety and accountability) demonstrates a logical and targeted approach to achieving WHS objectives.</p> <p>Moreover, the amendment operates within a regulatory context, where the primary aim is administrative enforcement rather than criminal prosecution.</p> <p>Stakeholder concerns have identified that there is an inconsistency with the LSL administration compared to other regulatory frameworks and this amendment will also facilitate consistency and harmonisation with model WHS laws.</p>
LSL Act amendment creation of strict liability offence under section 11A	<p>Stakeholders have identified that there are currently difficulties for some employees to obtain their long service leave entitlements where they have accrued long service leave credit, and their employment has ceased.</p> <p>Section 11A currently includes a positive obligation on employers to provide a person with their long service leave entitlements, but without an offence attached there is no clear way to enforce it.</p> <p>People can seek enforcement through section 13E of the LSL Act by making a complaint and having an authorised officer send a written notice to the employer, and failure to comply with this notice is an offence. However, in practice this is not a straightforward compliance pathway. It does not make the</p>

	<p>original obligation on the employer clear and requires an authorised officer to make two determinations, including whether section 11A has been complied with and whether 13E has been complied with.</p> <p>Amending section 11A brings this obligation in line with other obligations in the LSL Act.</p> <p>The offence elements that define the strict liability offence were carefully considered during the development of the model law amendments.</p> <p>The ACT Standing Committee on Legal Affairs⁵ conducted an inquiry into strict and absolute liability offences and acknowledged their merit in regulatory contexts. While the Committee raised concerns about human rights implications, it also recognised that strict liability can be appropriate where the goal is to ensure compliance with safety obligations and protect public welfare. Therefore, it is intended that this measure will be effective in ensuring compliance under the LSL Act through removing the need to prove intent, focusing instead on whether the duty was breached.</p>
WHS Act amendment – statutory limitation period	<p>The amendment responds to the reality that serious WHS breaches may not be immediately apparent, especially in complex or high-risk environments. In <i>Agius v JB Slab Pty Ltd</i>⁶, the collapse of the Rediwall structure and the serious injury to a vulnerable worker revealed systemic failures in training, supervision, and construction methods. These failures were only fully understood after detailed investigation, including structural engineering assessments and medical evaluations. In many cases, such as those involving delayed-onset illnesses (e.g. silicosis) or hidden structural risks, the regulator may not become aware of the full extent of the breach until well after the incident. The previous and rigid application of the two-year limitation period could prevent prosecution even when serious harm has occurred.</p> <p>The amendment’s limitation on rights in criminal proceedings, is rationally connected to the purpose of ensuring that serious breaches are not shielded from scrutiny due to procedural technicalities.</p> <p>By enabling more thorough investigations and ensuring accountability, the amendment strengthens the WHS framework’s capacity to protect workers and uphold public safety. The connection between the limitation and its purpose is both logical and necessary, given the complexity and gravity of WHS offences and the public interest in ensuring that duty holders are held to account.</p>

⁵ [Standing Committee on Legal Affairs, Strict and Absolute Liability Offences, February 2008.](#)

⁶ [2025] ACTMC 2.

<p>WHS Act amendment – s39A (1) and (2) strict liability offences</p>	<p>The offences incorporating strict liability elements have been carefully considered during the Bill's development. The strict liability offences arise in a regulatory context where, for reasons such as public safety, the public interest in ensuring that regulatory schemes are observed, requires the sanction of criminal penalties. In this case, a strict liability offence will ensure that enforcement of a duty holder's duty to notify a person with management or control of the workplace about a notifiable incident is as straightforward as possible.</p> <p>Model WHS laws have been developed by Safe Work Australia to provide a nationally consistent framework for securing the health and safety of workers across Australia. The model WHS laws are developed, reviewed and administered by an independent tripartite statutory body, Safe Work Australia, through a process involving all jurisdictions as well as employer and worker representatives.</p> <p>Since their introduction in 2011, these laws have been implemented in all jurisdictions except Victoria, with each jurisdiction adapting the model to suit local legislative protocols. The harmonised approach has significantly reduced regulatory complexity for businesses operating across multiple states and territories, while promoting equitable standards of protection for workers</p> <p>A key feature of the model WHS laws is the use of strict liability offences, particularly in regulatory contexts where public safety and the integrity of the system are paramount. These offences are designed to ensure that duty holders, PCBU's, officers, and those in control of work environments, are held accountable for compliance, regardless of intent. This is justified by the professional nature of these roles, where individuals and entities are expected to be aware of their legal obligations and operate with a high standard of care.</p> <p>Additionally, the offences incorporating strict liability elements have been carefully considered during the development of the model law changes. The ACT Government's Guide for Framing Offences was also strongly considered when developing this amendment.⁷ Strict liability offences are frequently used in ACT regulatory contexts where public safety and the integrity of regulatory schemes are paramount.</p> <p>It is noted that the tiered monetary penalties of \$14,000 for individuals and \$70,000 for body corporate organisations have also been based on and are reflective of the national model WHS laws.</p> <p>The effectiveness of strict liability provisions is reflected in the enforcement mechanisms and penalties prescribed under the model WHS Act. These include tiered monetary penalties and, in</p>
---	---

⁷ [Guide for framing offences \(April 2010\)](#).

	<p>some jurisdictions, provisions for industrial manslaughter, which carry significant fines and imprisonment terms. Such measures serve as strong deterrents and reinforce the importance of proactive compliance with WHS duties.</p> <p>Empirical research has shown that while harmonisation of laws is essential, the effectiveness of WHS regulation also depends heavily on how regulators support, inspect, and enforce these laws. Regulators across jurisdictions operate under a shared statutory framework and collaborate through national policies such as the National Compliance and Enforcement Policy. This has helped maintain consistency in enforcement practices, although variations in resources and priorities can influence outcomes</p>
WC Act amendment – statutory limitation period	<p>Extending the prosecution timeframe helps to achieve the objective of improving enforcement. The current 1-year limit has proven inadequate due to the complexity of investigations and the time it takes to gather all relevant evidence. The discrepancy between this limitation period and the limitation period for the other offences listed in section 202(1) has caused enforcement difficulties, particularly in cases where investigations were complex and required significant time to gather evidence, assess compliance, and determine culpability.</p> <p>For example, investigations into unsafe work practices or systemic failures often involve reviewing historical employment records, insurance documentation, and witness statements, tasks that are not feasible within a 1-year window. Through extending the prosecution period to five years, this corrects the historical error of omitting this provision from the list and aligns with other jurisdictions, ensuring that serious breach, such as failing to maintain compulsory insurance, can be properly investigated and prosecuted without being prematurely time-barred.</p> <p>The limitation enables effective regulatory enforcement in complex cases. The previous one-year timeframe was an unintended anomaly that hindered the regulator’s ability to investigate and prosecute breaches, especially where evidence gathering is time-consuming. Aligning the limitation period with other similar offending under the WC Act to five years, ensures consistency and reflects the seriousness of the offence.</p>

4. Proportionality s28(2)(e)

LSL Act amendment – abrogation of privilege against self-incrimination	<p>The limitation on the right to protection against self-incrimination is considered reasonable and demonstrably justified in a free and democratic society, provided that robust safeguards are in place. One of the key safeguards embedded in the legislative framework is the provision of use immunity, which ensures that any information, document, or thing obtained directly or indirectly through compliance with a requirement cannot be used</p>
--	---

	<p>as evidence against the individual in civil or criminal proceedings. This protection is critical in upholding the right against self-incrimination.</p> <p>In addition to use immunity, courts may interpret the provision to extend to derivative use immunity, which would prevent the use of evidence obtained as a result of the compelled information. This interpretation would further align the measure with human rights principles by ensuring that individuals are not indirectly penalised for complying with legal obligations to provide information.</p> <p>The immunity provisions are carefully calibrated. They allow for the use of compelled information only in proceedings related to the provision of false or misleading information. This exception is necessary to preserve the integrity of the regulatory regime and to ensure that individuals cannot avoid accountability by providing inaccurate or deceptive responses. It also supports the enforcement of related offences, such as failure to comply with information requests or attend proceedings.</p> <p>Importantly, the information gathered under these provisions is intended to support the WHS Commissioner's regulatory and investigative functions. Its use against an individual is strictly limited to circumstances where the individual has acted dishonestly or obstructively. This ensures that the powers are not used punitively, but rather to uphold the integrity and effectiveness of the regulatory system.</p> <p>Although prosecutions under these provisions are rare, the ability to use such information in egregious cases, such as where false or misleading information has been provided, is essential. It ensures that the law remains enforceable and credible, particularly in serious breaches of duty.</p> <p>In considering whether this approach is the least restrictive means reasonably available to achieve the objective, alternative options were examined. These included limiting the scope of the information-gathering powers or removing the exceptions for false or misleading information. However, such alternatives would significantly undermine the regulator's ability to enforce compliance and maintain the integrity of the scheme. Therefore, it is concluded that no less restrictive but equally effective means are reasonably available to achieve the intended objective.</p>
LSL Act amendment creation of strict liability offence under section 11A	<p>The limitation is proportionate to the objective pursued by the amendment, namely, the protection of workers' entitlements and the effective enforcement of long service leave obligations. The strict liability offence is confined to a specific regulatory context and applies only to clearly defined conduct, such as failure to pay long service leave entitlements upon cessation of employment. The maximum penalty of 50 penalty units under section 11A (5) of the LSL Act is in accordance with the Guide</p>

	<p>for Framing Offences and appropriate to the nature of the offence. This is reflective of the impact of failure to comply with the provision which could result in serious financial harm to the former employee. The provision preserves access to defences such as mistake of fact under the <i>Criminal Code 2002</i>. These safeguards ensure that the limitation does not go further than necessary to achieve its purpose. The amendment strikes a fair balance between the public interest in upholding employment standards and the rights of individuals subject to regulatory obligations.</p> <p>While strict liability offences may be justified in regulatory contexts, such as employment law, where parties are expected to understand and comply with clear obligations, the limitation must still be proportionate and necessary. In this case, the offence targets a specific and time-bound obligation (payment within 90 days), which is central to protecting workers' entitlements. However, because it allows for criminal liability without fault, safeguards such as statutory defences (e.g. mistake of fact), transparent enforcement guidelines, and ensuring that penalties are in place, when assessing to the nature of the breach.</p> <p>As duty holders are expected to know and uphold their obligations, it is justifiable to exclude the fault element in order to promote accountability and deterrence. The application of strict liability ensures that relevant persons consistently meet their obligations and act appropriately to protect workers' entitlements. This approach supports the integrity of the regulatory framework and reflects a proportionate response to the risks posed by non-compliance.</p>
WHS Act amendment – statutory limitation period	<p>By allowing courts to grant leave to prosecute out of time where it is in the interests of justice, the amendment introduces a balanced and discretionary mechanism that supports the paramount regulatory objective of accountability and deterrence, while preserving fairness for the accused.</p> <p>Maintaining fixed limitation periods without exception has proven inadequate in complex WHS matters. The proposed judicial discretion is the least restrictive and more balanced approach, as it ensures fairness to both regulators and accused persons, as opposed to not having a judicial discretion to allow prosecution after the expiry of the time limitation. The limitation applies only in specific cases. The accused retains all rights to challenge evidence, present a defence, and seek remedies for any prejudice caused by delay. The cohort of individuals that this amendment may limit the rights of is small, noting that most businesses in this context operate with a corporate structure. The court's role ensures that this power is not exercised arbitrarily or excessively, but only in circumstances where the delay is justified, and the prosecution remains fair. What is reasonable has to be assessed in the circumstances of each</p>

	<p>case, considering mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities.</p> <p>Further, should judicial discretion grant the extension to prosecute under the WHS Act, an accused person may seek remedies such as dismissal of proceedings or challenge the extension based on prejudice, including loss of evidence or inability to mount a fair defence. While the extension may serve public interest in enforcement, it must be balanced against the accused's right to a fair trial and protection from undue delay. However, the amendment does not remove time limits entirely, it introduces a judicial safeguard to assess whether an out-of-time prosecution is justified.</p>
WHS Act amendment – s39A (1) and (2) strict liability offences	<p>Strict liability offences under the WHS framework serve a critical regulatory function by clearly identifying the essential elements of compliance that duty holders, such as persons PCBUs, must uphold to maintain a safe workplace. These offences are narrowly targeted and relate specifically to procedural obligations, such as the notification of notifiable incidents, rather than the circumstances of the incident itself. This distinction ensures that the offence is focused on the failure to communicate vital safety information, not on attributing blame for the incident.</p> <p>The rationale for imposing strict liability in this context is well-established. It is generally accepted that strict liability is appropriate in regulatory schemes where public health and safety are at stake and where duty holders operate in a professional capacity and are expected to be aware of their legal obligations. The defence of honest and reasonable mistake of fact, as provided under the <i>Criminal Code 2002</i>, remains available, preserving fairness and ensuring that individuals are not penalised for genuine errors.</p> <p>Importantly, the offences do not impose burdensome requirements. They align with existing duties under the WHS framework and are designed to ensure timely and accurate reporting of incidents that may affect worker safety and the broader ACT community. The penalties associated with these offences are tiered and proportionate to the seriousness of the breach, reflecting the regulatory nature of the offence rather than a punitive criminal sanction.</p> <p>While strict liability offences do engage the right to be presumed innocent under section 22 (1) of the HR Act, this limitation is considered reasonable and proportionate. The offences apply only to the physical elements of the conduct, and do not remove the availability of defences or the requirement for the prosecution to prove the act beyond reasonable doubt. The offences are narrowly framed and do not impose reverse</p>

	<p>burdens of proof or mandatory sentencing, which would raise more significant human rights concerns.</p> <p>In assessing whether this approach is the least restrictive means reasonably available to achieve the objective, alternative models were considered. These included fault-based offences or administrative penalties. However, these alternatives were found to be less effective in ensuring compliance, particularly in a regulatory context where timely notification is essential and where duty holders are expected to be proactive in fulfilling their obligations. Fault-based offences would require proof of intent or negligence, which could undermine the deterrent effect and delay enforcement actions.</p> <p>Therefore, it is considered that no less restrictive but equally effective means are reasonably available to achieve the objective of ensuring workplace safety through prompt and accurate incident reporting. The strict liability model strikes an appropriate balance between regulatory efficiency, fairness, and the protection of human rights.</p> <p>Furthermore, Safe Work Australia continues to play a central role in maintaining and evaluating the model WHS laws. It supports ongoing legislative development and monitors implementation across jurisdictions to ensure the laws remain responsive to emerging risks and workplace changes.</p>
WC Act amendment – statutory limitation period	<p>It is difficult for the regulator to ensure that each PCBU holds a current comprehensive insurance policy. Noting that the cycle of an insurance policy is typically annual, and coverage details can change throughout the year due to renewal, cancellations or adjustments. This creates challenges for monitoring compliance in real time which in turn can make enforcement within a 1-year prosecution timeframe impractical in many circumstances.</p> <p>The amendment to extend the prosecution timeframe for an offence against section 147A of the WC Act to 5 years is a proportionate and necessary reform aimed at strengthening regulatory enforcement. It also ensures accountability for employers who fail to maintain compulsory workers compensation insurance. The change is suitable because it directly supports the legislative objective of the WC Act in protecting workers by allowing sufficient time for the regulator to investigate and respond to breaches, particularly those that are systemic or are only discovered after significant delay.</p> <p>It is necessary because no less restrictive alternative, such as relying solely on civil remedies or administrative penalties, would achieve the same deterrent effect or uphold the seriousness of the offence. These alternatives often lack the public denunciation and legal weight of criminal prosecution, especially in cases involving repeated or deliberate non-compliance.</p> <p>Importantly, the amendment is proportionate in the strict sense, as it does not introduce new offences or increase penalties but</p>

	<p>simply extends the window for enforcement of this particular section. This ensures that serious breaches can be prosecuted even if discovered late, without imposing undue burden on compliant employers. Overall, the reform balances the rights of employers with the public interest in maintaining a robust and fair workers compensation system.</p> <p>Appropriate safeguards, such as use immunity provisions that prevent compelled information from being used in criminal proceedings, are included, which makes the limitation even more proportionate. These safeguards help balance individual rights with the broader need to protect workers and uphold public safety.</p>
--	--

WC Act amendments (new payment type) – rights limited

1. Nature of the right and limitation (section 28(2)(a) and (c))

The limitation imposed by amendments to the WC Act, new part 4.9 in clause 28 of the Bill, introducing an initiative to meet the immediate impact on household members following the death of a worker results in overlapping impacts on several key rights under the HR Act that are addressed below. These include:

- the right to recognition and equality before the law
- the right to protection of the family and children, and
- cultural and other rights of Aboriginal Torres Strait Islander peoples and other minorities.

While each of these rights are distinct, they are closely interconnected in this context, as the limitations engaged relate to who may access the new compensation payment on the death of a worker.

Specifically, the amendment identifies those who may access the new payment as a domestic partner, child and/or parent including a stepchild and stepparent, who lived with the deceased worker at some point in the 6-months preceding the loss. This enables the payment to be directed to those most likely to bear an immediate burden following the worker's death while being able to achieve the intended purpose of a streamlined payment available immediately after a workplace death. This payment is in addition to other workers' compensation payments on the death of a worker that would be available to compensate financial dependants under the WC Act.

Section 8, recognition and equality before the law

Section 8 of the HR Act affirms that everyone is equal before the law and has the same right to equal and effective protection against discrimination.

The limitation on this right is considered to be engaged in so far as the payment is only being made available to certain household members of the deceased worker and may, as a result, exclude in some circumstances others who might also live in

the household with the deceased or have culturally significant caring relationship with the worker.

Section 11, protection of the family and children

Section 11 of the HR Act recognises the family as a fundamental unit of society entitled to protection. These rights ensure individuals in family relationships are treated fairly.

Similar to the engagement of rights under section 8 of the HR Act, this right may be engaged as a result of access to the new payment being provided to specified immediate family members that have resided with the worker at some time within the 6 months before the death of the worker. Relevantly, a domestic partner, children, step-children, parents and step-parents of workers who die at work and who had at some time in the six-months prior to their death, lived with the worker will be able to access this new payment type.

It is however acknowledged that a limitation may derive from some instances where the specified family members may mean that some other family members that may also have resided with the worker would not be able to access this payment.

Section 27, cultural and other rights of Aboriginal Torres Strait Islander peoples and other minorities

Section 27 of the HR Act protects every individual's right to enjoy their culture, practice their religion and use their language. The concept of family and caregiving relationships can be broad and often deeply rooted in cultural traditions.

As for the other rights above, this right may be engaged as a result of access to the new payment being provided to specified immediate family members that have resided with the worker at some time within the 6 months before the death of the worker. Relevantly, a domestic partner, children, step-children, parents and step-parents of workers who die at work and who had at some time in the six-months prior to their death, lived with the worker will be able to access this new payment type.

There may be instances where this right is engaged in so far as the new payment is limited to some family relationships within a household, where it does not extend to all culturally diverse familial or Aboriginal Torres Strait Islander people kinship relationships.

2. Legitimate purpose (section 28(2)(b))

There is national recognition that industrial deaths have catastrophic and lifelong effects.

In 2018, the Australian Senate carried out an inquiry into the prevention, investigation and prosecution of industrial deaths in Australia. The inquiry highlighted the devastating personal, social and economic effects of a death on families of the deceased worker.

In 2020 Safe Work Australia, the national policy body conducted in-depth work which has resulted in the development of the National Principles. The National Principles are intended for jurisdictions to provide a high-level framework to implement family-centred policies and practices at the operational level to support bereaved families impacted by an industrial death. Key concepts featured in the National Principles are “timeliness” and “support”.

The establishment of the provision promotes the National Principles and addresses compensation gaps by alleviating immediate financial burden through financial payment to impacted families in a timely manner. Whilst the WC Act already provides for death benefit payment under section 77, this provision maintains determination of liability for a claim to be successful. The claims under section 77 can be a prolonged process as it can be complex, requiring evidentiary proof and in some circumstances needing the process for handling disputes related to compensation claims, including the need for an insurer to either accept liability and pay the claim or refer the matter to the Courts for determination. Compensation payment under section 77 may not assist in the immediate need and may not be guaranteed.

Research has shown that for every worker killed in a workplace, there will typically be 12-20 family members, close friends and colleagues who will be affected by the death. The purpose of the household (cohabitation) requirement is to establish an objective and administratively simple eligibility test that is able to be applied very quickly, while directing payment to family members most likely to incur immediate and urgent financial pressure. This approach not only supports administrative certainty and ensures employer-funded statutory schemes are distributed fairly and proportionately.

The limitation is necessary to ensure that the limited amount of additional compensation is directed quickly to those family members most likely to incur and be responsible for meeting the immediate financial impact of a work related death. This secures the integrity, sustainability and economic viability of the workers compensation scheme remaining intact.

Section 8, equality before the law

The provision intends to provide immediate financial support to a worker’s household in the event of a work-related death and is limited to members of the household as defined under the provision, with each having equal rights to make claim for compensation under the provision. It is a small immediate payment of either \$5,000 or \$10,000 intended to help meet household needs following a workplace death in addition to other workers compensation benefits that may be claimed.

The limitation is premised on the direct impact of the death to close family members, allowing for streamlined payment processes that is not tied to lengthy processes requiring determination of liability or financial dependency.

Members who fall under a broader category of family may be entitled to other compensatory entitlements under the WC Act.

Section 11, protection of the family and children

The WC Act establishes a range of compensation benefits, including those payable in response to worker deaths, to ensure a worker's family and dependent children are financially cared for. These existing measures, which include lump sum payments, payments for funeral expenses and weekly compensation arrangements, are not impacted by the new provision.

The immediate crisis payment recognises that compensation payable to dependents or family members may not be made in the immediate term of crisis following a workers' death, particularly where compensation if arrangements for dependent children need to be considered by the court. As such, the immediate payment amount is not restricted by evidentiary obligations to demonstrate financial dependence, but by the relationship of the household.

This approach allows the least restrictive mechanism for payment ensuring it reaches the household when it is most needed.

Section 27, Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities

In addition to the above explanation of the legitimate purpose of the new payment, in relation to this right the legitimate purpose of the household requirement is needed to ensure that the payment is provided to those directly impacted following the death of a worker consistent with the policy intent of helping to meet immediate household needs. Thus ensuring that this payment is able to be made immediately, in instances where liability is likely not to have been determined yet.

Through this policy, the payment provides immediate financial support that helps members of the workers immediate family and may otherwise experience financial hardship as a result of the death.

3. *Rational connection between the limitation and the purpose* ***(section 28(2)(d))***

There is a rational connection between limiting the eligibility and the aim of the amendment to provide quick and consistent payments. The specified cohort of eligible individuals achieves the administrative purpose of determining entitlement without ambiguity ensuring a timely payment during a time of crisis. These eligibility requirements provide a simple and clear understanding for all, reduces the risk of multiple or competing claims, and avoids complex cultural or relational assessment that might otherwise delay the payment.

The amendment creates a clear and streamlined framework for payment decisions, minimising delays and achieving its purpose to alleviate some financial strain during a tragic and difficult time. It avoids subjective determinations of relationship closeness and dependency.

The six-month residential requirement is rationally connected to the purpose, being to provide a clear and objective threshold and ensure the compensation reflects the immediate need. Relevantly, it is an evidentiary requirement and is not intended to

mean that the person must have physically lived with the worker for the full 6 months in order to receive the payment.

The household requirement, along with the specified family members eligible to receive the payment will mean that this small additional payment to existing workers compensation benefits is able to be paid and is paid to assist in meeting immediate household needs following a workplace death.

4. *Proportionality section 28(2)(e)*

While there may be less restrictive means such as removing the household requirement or expanding the specified recipients of the payment these would need to be given careful consideration to ensure that they do not undermine the policy intent of immediate access to financial support for household needs or create other unintended inequities.

This is particularly the case where it is likely that an expansion of recipients would introduce factors that have the effect of delaying payment because they require the assessment of priority of needs arising from the death of the worker and genuine relationship determinations.

On balance, the current limitation is considered proportionate given the size and intended purpose of the payment, particularly as mechanisms of a review are available which will allow the application of the criteria to be considered in individual cases, for example regarding situations where a family member may be considered to have lived with the worker for a period during the last six months.

While the impact of the limitation is moderate and may exclude certain individuals from receiving the payment this is necessary and proportionate to balance the need for fair access to compensation payments and the responsible management of financial resources, being the premiums collected from compulsory insurance policies.

Further, the provision establishes a regulation making power that will allow for other areas of immediate need for financial compensation in the event of a workplace death to be considered and developed. It is the intent that this regulation will be developed in consultation with stakeholders, including the Justice and Community Safety Directorate (JACS) Human Rights and Social Policy team.

Section 8, recognition and equality before the law

The provision intends to assist in meeting immediate household needs arising from a worker death which has necessitated an adjustment to the broader definition of family member applied to the WC Act for existing statutory benefits that may be available.

In doing so, those household members, as defined by the provision, are equally able to make a claim for the crisis payment. The payment may also be made without requiring financial dependency to be established.

In order to allow the payment to reasonably be made prior to a liability determination it is necessary to target the recipients to ensure it is directed to household members that are expected to bear the greatest need arising from the worker's death.

Further, as the payment is not tied to financial dependency and applies a clear list of who is eligible for the payment, this makes the administrative process for both the family member applying and the insurer in making the payment easier and quicker due to the streamlined requirements, will not unnecessarily delay the payment and will ensure it reaches and assists in meeting the deceased worker's household demands.

Section 11 – protection of the family and children

The amendments in this Bill allow for immediate financial support to a worker's household in the event of a work-related death.

Existing death benefits available under the WC Act are available to dependents of a deceased worker where the dependent is totally or partly dependent on the workers' earnings and a member of the workers' family. These existing compensation benefits are not impacted by the new provision and includes death benefits that are payable to children not limited by household or residential status to the deceased worker – on the basis that the child is financially dependent on the deceased workers' earnings.

With this in mind, the new (additional) payment has been targeted to allow for a more immediate payment to meet the deceased worker's immediate household members' needs where payment is not tied to complex assessments of financial dependency.

Broadening the possible recipients of this payment has been carefully considered, and noting the regulation-making power should be carefully considered in the future, to ensure that any unintended consequences are mitigated and do not detract from the intended purpose of the payment. For instance, if cast widely even where a genuine relationship may be demonstrated it could be possible for the total payment cap to be reached before those bearing the greatest need have had an opportunity to apply. Conversely, and contrary to the intended immediacy of the payment proximate to the death of the worker, an insurer may alternatively decide to wait until the full 3 months has elapsed and all possible applications are received before making any payments to ensure an equitable distribution of the payment.

On this basis the limitations applying to who may receive this payment are considered to be proportionate and justified in the context of the size and intended purpose of the new payment within the objectives of the WC Act.

Section 27 cultural and other rights of Aboriginal Torres Strait Islander peoples and other minorities

Aboriginal and Torres Strait Islander peoples hold distinct cultural rights, including rights to kinship ties and recognition of shared family and community responsibility for the upbringing of children. The mechanism to allow for a payment to be made to alleviate the immediate impact on a worker's household does not lessen the Territory's commitment to uphold and affirm the cultural rights of Aboriginal and Torres Strait Islander people.

The new payment has been designed in recognition of the immediate hardship that families may face following a workplace death; it seeks to establish a simplified mechanism where family members of the deceased are able to access financial assistance within the workers compensation infrastructure, to assist in alleviating immediate financial hardship on the household.

The payment is in addition to other existing statutory compensation available where a worker suffers a work-related injury, including death and specifically contemplates all financial dependents of the injured or deceased worker.

As an additional but small payment under workers compensation laws, it is intended as a mechanism for close family members to access an interim or early lump sum payment that is able to meet the immediate impact on household members of a worker's death. Extensive expansion of those who can receive the payment outside of those immediately connected to the worker household would likely require additional administrative burden akin to existing compensation payment types, such as a financial dependency, and may detract from the immediacy and purpose of the payment.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause provides the name of the Act, being the *Workplace Legislation Amendment Act 2025 (No 3)*.

Clause 2 Commencement

This clause provides for commencement of the Act, noting that:

- the following provisions commence on the day after this Act's notification day:
 - section 3
 - part 6
 - schedule 1 part 1.4
- part 5 will commence on 1 March 2026.

All other provisions commence on the 7th day after the Act's notification day.

Clause 3 Legislation amended

This clause lists the legislation which the Act amends including:

- *Dangerous Substances Act 2004*
- *Long Service Leave Act 1976*
- *Long Service Leave (Portable Schemes) Act 2009*
- *Public Sector Workers Compensation Fund Act 2018*
- *Workers Compensation Act 1951*, and
- *Work Health and Safety Act 2011*.

Part 2 Dangerous Substances Act 2024

Clause 4 Inspectors

New section 207(1)(c)

This provision provides that the Work Health and Safety Commissioner is an inspector under the *Dangerous Substances Act 2004*.

Part 3 Long Service Leave Act 1976

Clause 5 Manner of payment for leave

Section 8 (4)

This section has been omitted and inserted in section 11 under clause 9.

Clause 6 Pay in lieu of long service leave

New section 11A (4) and (5)

This provision has been added to ensure that employees upon the cessation of employment, if they have long service leave entitlements, are paid within a reasonable timeframe. Under this new provision, an employer is required to pay a person who ceases employment and has long service leave entitlement within 90 days of the cessation of employment.

It also sets out where an employer does not pay long service leave entitlements within 90 days after the person ceases employment, then the employer commits an offence, one of strict liability.

Clause 7 New Section 12A

This section inserts new definitions for the words “at”, “occupier” and “premises” for the purposes of Part 3 of the Act.

Clause 8 Section 13C

This clause provides for several enforcement and compliance tools including:

- powers of authorised officers to enter premises
- production of identity cards by authorised officers
- obtaining of consent to enter premises
- powers to obtain, inspect and copy information
- abrogation of privilege against self-incrimination, and
- warning to be given by authorised officers.

Clause 9 Dictionary, new definitions

This clause adds the newly defined terms arising from this Bill into the dictionary section of the Act.

Part 4 Long Service Leave (Portable Schemes) Act 2009

Clause 10 Who is an *employer*?

Section 7 (1) (a)

This provision amends the services industry as a covered industry for the purposes of who is deemed to be an employer under the Act.

This provision provides for who is an employer within a covered industry and makes it clear that for:

- the accommodation and food services industry and the hairdressing and beauty services industry within the services industry scheme only covers those employers that engage in these industries as their predominant activity; and
- for all other industries, including the contract cleaning industry within the services industry scheme, it covers employers that engage to any extent in the covered industry.

Clause 11 Declarations by Minister—additional coverage of Act
Section 12 (4) (b)

This clause omits this section.

Clause 12 Warning to be given
Section 76B (1)

This clause simplifies the provision.

Clause 13 Payment for leave—building and construction industry
Schedule 1, section 1.9 (3)

This provision substitutes the current payment provision and provides better flexibility for when long service leave entitlements can be paid to a worker. This flexibility will ensure that a worker can receive the payment at a time that better suits their financial needs, being either in the 14-day period before they take the long service leave or in any other case, within 21 days after the worker's application was made. This flexibility recognises that some workers may make applications well in advance of taking leave and may seek payment closer to their time of leave. This amendment is made in each relevant Schedule to ensure consistency.

Clause 14 What is the *services industry*?
Schedule 2, section 2.1 (1) (a) (i)

This provision amends “cleaning services industry” to “contract cleaning services industry”. The word “contract” was inadvertently omitted at the time of it merging under the services industry scheme. This amendment does not change the intent of the prior meaning, being that the coverage for cleaning services is limited to contract cleaning services.

Clause 15 What is *services work*?
Schedule 2, section 2.2 (1), definition of *services work*, paragraph (a)

This provision substitutes “cleaning services” with “contract cleaning services”.

Clause 16 Schedule 2, section 2.2 (5)

This provision substitutes the definition of “contract cleaning services industry”.

Clause 17 Payment for leave—services industry
Schedule 2, section 2.9 (3)

This provision substitutes the current payment provision and provides better flexibility for when long service leave entitlements can be paid to a worker. This clause is consistent with the amendments made to other relevant schedules, including for the building and construction industry, community sector industry, and the security industry.

Clause 18 Payments for leave—community sector industry

Schedule 3, section 3.10 (3)

This provision substitutes the current payment provision and provides better flexibility for when long service leave entitlements can be paid to a worker. This clause is consistent with the amendments made to other relevant schedules, including for the building and construction industry, service industry, and the security industry.

Clause 19 Payments for leave—security industry

Schedule 4, section 4.10 (3)

This provision substitutes the current payment provision and provides better flexibility for when long service leave entitlements can be paid to a worker. This clause is consistent with the amendments made to other relevant schedules, including for the building and construction industry, community, and service industry.

Clause 20 Dictionary, new definitions

This clause is consequential on amendments in clause 13 of the Bill and defines references to the accommodation and food services industry and hairdressing and beauty services industry for the purposes of section 7 of the Act.

Part 5 Public Sector Workers Compensation Fund Act 2018

Clause 21 Payments from PSWC fund banking accounts

Section 12 (c)

This provision provides clarity regarding payments that can be made from PSWC fund banking accounts to include the reasonable costs of the PSWC commissioner in exercising their functions under the Act including the costs of remuneration, allowances and office accommodation.

Clause 22 Functions of PSWC commissioner

New section 19 (ca)

This provision adds to the PSWC commissioner's functions under the Act and provides an express function to conduct and support injury prevention initiatives and activities across the ACT Public Service that aim to reduce incidents of work injuries.

Part 6 Workers Compensation Act 1951

Clause 23 Living outside Australia

Section 44 (2)

This clause omits the need to have a medical referee certify a document for the purposes of this Act.

Clause 24 Special provisions for HIV/AIDS

Section 60

This provision removes the previous special provisions which have applied to HIV/AIDS.

Clause 25 New part 4.9

This clause provides for a payment to financially support households impacted by the workplace death of a member of that household. It provides that, upon application made within 3 months of a worker's death, an employer must pay a one-off amount of \$10,000 (CPI indexed) to a domestic partner and/or \$5,000 (CPI indexed) to any other eligible family member of the deceased worker's household, including a parent and child. These payments must be made within 7 days of receiving the application, ensuring prompt financial assistance during a period of bereavement.

The provision sets a maximum total payment cap of \$50,000 (CPI indexed) across all applicants. Importantly, these payments are made on a without prejudice basis and do not affect any other statutory compensation entitlements arising under the Act.

Clause 26 Inspectors

New section 188 (3)

This clause establishes that the regulator is also an inspector, meaning the regulator may exercise the powers and functions of an inspector.

Clause 27 Medical referees

Section 201 (1) and (2)

This provision substitutes the previous section and gives the regulator the ability to appoint a doctor as a medical referee for the purposes of the *Workers Compensation Act 1951*. It sets out that the regulator may appoint a doctor as a referee only if satisfied they have the experience and expertise to perform the duties of a medical referee.

Clause 28 New chapter 22

This clause provides for transitional amendments relating to the application of part 4.9 (Payments to families of deceased workers).

Clause 29 Dictionary, definition of *inspector*

This clause substitutes the definition of "inspector" to mean an inspector as defined under section 188 of the *Workers Compensation Act 1951*.

Part 7 Work Health and Safety Act 2011

Clause 30 What is a *notifiable incident*

Section 35, definition of *notifiable incident*

The existing section 35 defines what a notifiable incident is. The requirement that a notifiable incident must "arise from the conduct of the business or undertaking" is referenced in existing subsection 38 (1). The absence of this requirement in section 35 may lead to over-notification in some instances. This amendment makes the provision more prominent in order to clarify which incidents are notifiable incidents under Part 3 of the *Work Health and Safety Act 2011*.

Clause 31 Sections 36 and 37

New paragraphs 36(1)(a) and (b) clarify that the test for whether an injury or illness is a serious injury or illness is an objective test in the sense that they do not require that a person has received the treatment referred to in the provision for an injury or illness to be considered a serious injury or illness. It is intended to capture situations where treatment was not available, for example due to remoteness, where the seriousness of the injury or illness was not recognised or where the injured or ill person refused treatment.

New section 36(1)(d) supports improved notification of serious injuries and illnesses requiring ‘medical treatment within 48 hours of exposure to a substance’. This definition is also adjusted to capture treatment following exposure to a substance provided by Medical Practitioners, Paramedics, Registered Nurses or Nurse Practitioners and not limited to treatment by a doctor.

This provision updates the definition of a dangerous incident to improve clarity and enforcement. It includes incidents at workplaces that expose people to serious health or safety risks due to immediate or imminent hazards. New inclusions are electrical and arc flash explosions, mobile plant incidents (e.g. overturning or collisions involving machinery like forklifts or quad bikes), and serious falls (e.g. falling between levels, into holes or water, or onto hazardous surfaces). These updates ensure clearer reporting obligations and better protection, even if no injury occurs.

For example, if a visitor to a worksite falls into a deep trench, this is a serious fall and meets the meaning of a dangerous incident where it exposes the person to a serious risk to safety, even where the person was not injured. In this circumstance, this is a notifiable incident.

Clause 32 Duty to notify of notifiable incidents

Section 38 (1)

This clause omits the wording “arising out of the conduct of the business or undertaking” noting this context is canvassed in clause 33 above.

Clause 33 Section 39 heading

This clause amends the heading of section 39 and inserts the words “duty to preserve incident sites and evidence”.

Clause 34 Section 39 (1) and note

This provision updates the duty to preserve an incident site. It requires the person with management or control of a workplace where a notifiable incident has occurred to, as far as reasonably practicable, preserve both the site and any evidence, such as electronic records and witness details, until an inspector releases them. It also allows an inspector to release all or part of the site.

The requirement to preserve the incident site and evidence is subject to what is reasonably practicable. There may be circumstances where it is not reasonably practicable to preserve the site or evidence, for example when doing so may present a risk to a person’s health or safety and immediate action is needed to remove the risk.

Clause 35 Section 39 (2)

This section is a technical amendment which omits “subsection (1)” and substitutes in its place, “this section”.

Clause 36 Section 39 (3)

This section is a technical amendment which omits “subsection (1)” and substitutes in its place, “this section”.

Clause 37 Section 39 (4)

This clause omits the current section. This results in the obligation to preserve an incident site to include where a suspected sexual assault incident has occurred.

Clause 38 New section 39A

This clause inserts a duty of a person conducting business or undertaking (PCBU) and a person with management or control of workplace to notify each other of notifiable incidents. There is no existing express requirement in the *Work Health and Safety Act 2011* for a PCBU or a person with management or control of a workplace (where they are different persons) to notify each other that a notifiable incident has occurred. This may frustrate the ability of duty holders to meet their duties under the Act (for example, to ensure the regulator is notified of a notifiable incident), as a duty holder may be unaware that an incident, in relation to which they have a notification or site preservation duty, has occurred.

Section 39A inserts a new section at 39A (1) which provides that a PCBU with a duty under section 38 must, immediately after becoming aware of the relevant occurrence activating the duty, ensure that a person with a corresponding duty under section 39 is notified of the matter.

Subsection 39A (2) provides that a person with management or control of a workplace with a duty under section 39 must, immediately after becoming aware of the relevant occurrence activating the duty, ensure a PCBU with a corresponding duty under section 38 is notified of the matter.

The maximum penalty for contravening subsections 39A (1) or (2) is a tier D monetary penalty.

Clause 39 Limitation period for prosecutions

Section 232 (2)

This provision introduces a discretionary power for the court to allow a WHS prosecution to proceed outside the standard limitation period, where it is deemed to be in the interests of justice. Under the existing provision, prosecutions for offences under the *Work Health and Safety Act 2011* must be commenced within 2 years from the date the offence first comes to the notice of the regulator, with some exceptions. This rigid timeframe has, in some cases, prevented legitimate prosecutions from proceeding, particularly where the harm or illness resulting from a workplace incident manifests long after the initial exposure or event, such as can occur with silicosis or other delayed-onset occupational diseases.

This provision replaces subsection (2) and introduces a section which allows a proceeding to be brought after the limitation period with the court's permission, which can only be granted if the court is satisfied that doing so serves the interests of justice.

Clause 40 Dictionary, note 2

This section inserts definitions for “doctor”, “enrolled nurse” and “nurse”.

Schedule 1 Technical amendments

Explanatory notes have been added to the Bill for the amendments set out below.

Part 1.1 Dangerous Substances Act 2004

Part 1.2 Long Service Leave Act 1976

Part 1.3 Long Service Leave (Portable Schemes) Act 2009

Part 1.4 Workers Compensation Act 1951

Part 1.5 Work Health and Safety Act 2011